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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/859,353	05/20/1997	ALCINO RESENDE DE ALMEIDA	Q34367-1	7656

23117 7590 09/08/2003  
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EXAMINER

LEE, KEVIN L

ART UNIT	PAPER NUMBER
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3753

DATE MAILED: 09/08/2003

31

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

08/859,353

Applicant(s)

ALMEIDA, ALCINO RESENDE DE

Examiner

KEVIN L LEE

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 4-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 13 and 14 is/are allowed.
- 6) ☐ Claim(s) 4-7, 9, 10 and 12 is/are rejected.
- 7) ☐ Claim(s) 8 and 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 28 & 30.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## **DETAILED ACTION**

### ***Response to Applicant's Request for Reconsideration***

Applicant's request for reconsideration filed June 23, 2003 has been thoroughly reviewed and considered by the examiner. In view of applicant's arguments, the claim objections and claim rejections under 35 U.S.C. 112, first paragraph are hereby withdrawn.

### ***Allowable Subject Matter***

The indicated allowability of claims 4-14 is withdrawn in view of further reconsideration of the patent to Short (U.S. patent no. 4,390,061). Rejections based on the cited reference(s) follow.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 4-7, 9, 10 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Short (U.S. patent no. 4,390,061). The patent to Short discloses an apparatus used to produce liquids from a well, the apparatus provided in an oil well (10) having a casing (22) with tubing (80) concentrically disposed therein. Given the

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broadest reasonable interpretation of the claims of the instant invention, the gas injection element (64) of Short is readable as a "gas-lift valve" since the injected gas lifts the well fluid upwardly through a venturi member (46) and into a production tubing (24). The injected gas is from an external source. The gas injection element (64) includes a port (68) through which compressed gas is passed through a venturi housing (54), a gas injection passage (66), and the venturi member (46), col. 4, line 56 thru col. 5, line 2. The venturi member is readable as the claimed "nozzle" having a continuously open passage comprising a curved inlet portion, a straight intermediate portion and a curved, outwardly tapered, conical shaped outlet portion. A "high velocity jet of gas" is directed through the venturi member, col. 5, lines 10-14.

Applicant has previously argued on page 12 of the amendment filed May 8, 2001 (Paper no. 17) that the Short reference did not anticipate the rejected claim 4 because Short's structure "is not disposed for production fluid therethrough" and because Short's device is a jet pump operating differently from a "gas lift valve." Upon further reconsideration, applicant's arguments are not persuasive. First, the claims of the instant application do not preclude fluid flow through the venturi member. The claims only recite that the compressed gas flows through the venturi sections. In Short, the compressed gas also flows through the venturi member (46) with the claimed limitation of speeding up initially through the inlet of the venturi member and slowing down through the outlet of the venturi member. Second, although the Short device is a jet pump, it is noted that the instant claims broadly recite an apparatus comprising a "gas-

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lift valve" without providing limitations precluding the application of the Short reference in anticipating the claims.

***Allowable Subject Matter***

Claims 8 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 13 and 14 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KEVIN L LEE whose telephone number is (703) 308-1025. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.

September 4, 2003

  
**Kevin Lee**  
**Primary Examiner**